

REMARKS

This is a full and timely response to the outstanding non-final Office action dated December 17, 2009. The Examiner has required the Applicant to elect to prosecute one of four (4) groups of claims identified in the Office Action. In response to the restriction requirement, Applicants respectfully elect to prosecute the claims of Group IV, corresponding to claims 25-30, with traverse, as set out hereafter.

First, in the interests of equity and fairness, Applicants should be entitled to pursue different types of claims in the present application, particularly, apparatus claims and method claims for the invention, to fully protect the invention, because there is a different body of law pertaining to each of these different types of claims. The restriction requirement is therefore unfair to the Applicant, because it will require the Applicants to file and bear the additional cost and time delay associated with filing one or more divisional or continuing applications in order to cover each type of claim set.

Second, as provided in 35 U.S.C. § 121, restriction to one of two or more claimed inventions is proper only if the inventions are "independent and distinct." In its discussion of the propriety of restrictions, MPEP § 803 further provides that if search and examination of two or more inventions can be made without "serious burden," the Examiner must examine them on the merits even if the claims are directed to distinct or independent inventions.

In the present case, Groups I, II, III, and IV although not necessarily obvious in view of each other, are very similar in subject matter. More specifically, each pertains to the general technical field of an expandable intra-gastric balloon (1) for treating obesity, the balloon being for implanting in the stomach in order to reduce its volume. For this reason, Applicants respectfully submit that the inventions described in these claims are not "independent" as defined

in MPEP § 803 and that the restriction requirement therefore is improper as between Groups I, II, III, and IV.

For at least the foregoing reasons, Applicant respectfully traverses the restriction requirement and respectfully requests the Examiner to examine the claims of Groups I, II, III, and IV together. Applicant expressly reserves the right to present the non-elected claims, or variants thereof, in continuing applications to be filed subsequent to the present application. Should the Examiner have any questions regarding this response, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,


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